

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

NORTHPORT HEALTH SERVICES OF ARKANSAS, LLC;  
NWA NURSING CENTER, LLC; CHAPEL RIDGE NURSING  
CENTER, LLC; ET AL.

NO. 5:19-cv-05168-TLB

PLAINTIFFS

v.

UNITED STATES DEPARTMENT OF HEALTH AND  
HUMAN SERVICES; ALEX M. AZAR II, *in his official  
capacity as Secretary of the United States Department of Health  
and Human Services*; CENTERS FOR MEDICARE &  
MEDICAID SERVICES, SEEMA VERMA, *in her official  
capacity as the Administrator of the Centers for Medicare &  
Medicaid Services*

DEFENDANTS

**PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

Plaintiffs, by and through their undersigned counsel, and pursuant to Federal Rule of Civil Procedure 56 and Local Rules 7.2 and 56.1, respectfully request entry of summary judgment against Defendants on all counts in the First Amended Complaint (Dkt.25) setting aside the final rule published at 84 Fed. Reg. 34,718 (July 18, 2019) (to be codified at 42 C.F.R. § 483.70(n)) (the "Amended Arbitration Rule"). As set forth in the accompanying brief, the Amended Arbitration Rule unlawfully seeks to impose a number of restrictions on the ability of long-term care facilities to enter into pre-dispute arbitration agreements with their residents. Specifically, the Amended Arbitration Rule exceeds Defendants' statutory authority; is arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law; and was promulgated without observance of the procedures required by law. There are no genuinely disputed material facts, and Plaintiffs are entitled to judgment as a matter of law on all counts.

Dated: October 4, 2019

Respectfully submitted,

/s/ Kirkman T. Dougherty

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**CERTIFICATE OF SERVICE**

I, Kirkman T. Dougherty, hereby certify that on this 4th day of October, 2019, the foregoing is being electronically filed with the Clerk of the Court using the CM/ECF System Court which will send notification of such filing to all parties of record.

/s/ Kirkman T. Dougherty

Kirkman T. Dougherty